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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/786,636	02/25/2004	Martin Sugar	104035.274053	3096

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EXAMINER
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CHANNAVAJJALA, LAKSHMI SARADA

ART UNIT	PAPER NUMBER
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1615

DATE MAILED: 08/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/786,636

Applicant(s)

SUGAR ET AL.

Examiner

Lakshmi S. Channavajjala

Art Unit

1615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-12, 14-18, 20-22 and 24-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12, 14-18, 20-22 and 24-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

Art Unit: 1615

### DETAILED ACTION

Receipt of amendment and remarks dated 5-16-05 is acknowledged.

Claims 24-26 are newly added. Accordingly, claims 1-12, 14-18, 20-22 and 24-26 are pending.

The following rejection of record has been maintained:

Claims 1-12, 14-18 and 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,468,514 ('514) in view of any one of Chemical Abstracts XP 002233115 (XP 1999), XP 002233116 (XP 1998) or XP 002233114 (XP).

'514 teaches the use of one or more surfactants in personal hygiene composition such as a shampoo or hand washing soap. '514 teaches that surfactants such as sodium lauryl sulfate (SLS) not only clean the skin by flushing out the dirt but also causes skin irritation and mucous membranes (lines bridging col. 1-2). '514 teaches that totally avoiding SLS is not possible and hence suggests combining different types of surfactants such as so as to replace SLS with milder surfactants and thus increase the skin compatibility of the cleansing composition (col. 2 and col. 4). '514 teach surfactants such as N-acyl amino acids are milder and hence can be combined with SLS (col. 5-6). However, '514 fail to teach the claimed PEG-7 olive carboxylate as a foam booster or a surfactant.

XP references discussed above teach the claimed olive oil carboxylate as a natural and yet mild cleansing surfactant with low irritancy and high foaming action. The references suggest including the surfactant in toiletry compositions for their cleansing and low irritancy effect. Therefore, it would have been obvious for one of an ordinary skill in the art at the time of the instant invention to add an effective amount of PEG-7 olive oil carboxylate as a surfactant in the composition of '514 because '514 desires a mild surfactant alternative to the irritating sodium lauryl sulfate and the XP references teaches the claimed carboxylate as a suitable alternative

Art Unit: 1615

that is biodegradable, low irritating and yet has a good cleansing and foaming activity. One of an ordinary skill in the art would have expected to reduce the irritating effect of SLS by its adsorption to skin due to the presence of PEG-7 olive oil carboxylate. Optimizing the amounts of SLS and sodium PEG-7 olive oil carboxylate so as to achieve the desired cleansing and low irritation would have been within the scope of a skilled artisan.

**NEWLY ADDED CLAIMS 24-26 ARE INCLUDED IN THE REJECTION FOR THE REASONS MENTIONED ABOVE.**

***Response to Arguments***

Applicant's arguments filed 5-16-05 have been fully considered but they are not persuasive.

Applicants argue that office fails to show a proper motivation to combine the '514 patent with the cited abstracts. It is argued that the '514 patent teaches mixtures of a surfactant with one or more different co-surfactants but not the sodium PEG-7 olive oil carboxylate as a co-surfactant, and that one of an ordinary skill in the art would not be motivated to replace the irritating surfactants of '514 with the sodium PEG-7 olive oil carboxylate. Applicants' argument is not persuasive because if '514 were to teach sodium PEG-7 olive oil carboxylate, the reference would have anticipated instant claims. The instant rejection states that the claims are obvious and not anticipated by '514. Further, the above rejection does not state a motivation to "replace" the surfactants of '514 and instead to combine sodium PEG-7 olive oil carboxylate (of abstracts) with the SLS surfactant of '514. It is argued that '514 teaches acylamino acids co-surfactants, which are an entirely separate class of compounds distinct from sodium PEG-7 olive oil carboxylate and hence the latter cannot be viewed as an obvious variants of acylamino acids of '514. It is argued that there is no specific or inherent teaching therein that would motivate one of

Art Unit: 1615

an ordinary skill in the art to seek out other compounds, such as non-acylamino acids, and more particularly, sodium PEG-7 olive oil carboxylate, without relying on the instant disclosure.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). The level of knowledge that is within the ordinary skill at the time of the instant invention is that SLS is used in combination with other surfactants or co-surfactants that are mild and non-irritating, irrespective of the class of compounds they belong to, because SLS is though effective in cleaning has skin irritating properties and the co-surfactants are mild and less irritating. The motivation to combine sodium PEG-7 olive oil carboxylate of the abstracts with the '514 surfactants comes from the fact that the teachings of '514 as well as the abstracts form analogous art, addressing the same problem in the same field of endeavor. Accordingly, a skilled artisan would be motivated to combine different compounds used for the same purpose with an expectation to achieve a synergistic cleansing effect and in the instant case, with an expectation to reduce the irritation of SLS by adding other surfactants, which have cleansing power (like SLS). Instant "comprising" language allows for the presence of sodium PEG-7 olive oil carboxylate, acylamino acids as well as SLS.

With respect to applicants' argument regarding the claimed concentrations of sodium PEG-7 olive oil carboxylate and the high amounts of SLS required by '514, applicants have not shown any unexpected results with the claimed concentrations of SLS or sodium PEG-7 olive oil carboxylate. Further, general differences in the amounts, percentages or concentration will not

Art Unit: 1615

support patentability of subject matter encompassed by the prior art unless evidence to the criticality has been established. In this regard, sodium PEG-7 olive oil carboxylate as well as SLS are recognized for the same property as surfactants and the former is additionally recognized as a skin tolerant, with low toxicity, mild and natural (as admitted by applicants). Therefore, absent criticality, the motivation to add an optimum amount of a natural, mild, low irritating and skin tolerant surfactant to a composition containing high cleansing and yet highly irritation surfactant would have been obvious for a skilled artisan with an expectation to reduce the amount of SLS and thus reduce the irritation flows logically.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lakshmi S. Channavajjala whose telephone number is 571-272-0591. The examiner can normally be reached on 9.00 AM -6.30 PM

Art Unit: 1615

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K. Page can be reached on 571-272-0602. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Lakshmi S Channavajjala  
Examiner  
Art Unit 1615  
July 26, 2005

THURMAN K. PAGE  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER II